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3 Charges Dropped Against ITT Executive

The Justice Department yesterday announced that "to safeguard national security and U.S. foreign intelligence interests" it will not pursue three of the six perjury-related charges against International Telephone and Telegraph executive Edward J. Gerrity Jr.

Gerrity is accused of having lied to a Senate committee about his company's involvement in Chile.

The first notification that one count of perjury, one of subornation of perjury and one of making a false statement, would not be pursued came during a hearing before U.S. District Court Judge Aubrey E. Robinson Jr. when prosecutor G. Allen Carver Jr. said the government had decided not to pursue, rather than drop, the three counts.

Gerrity, ITT senior vice president for public affairs, and Robert Berrellez, an official for ITT in Latin America, were indicted on six counts each last March in separate criminal informations which charged that the two men, and unindicted co-conspirator Harold Hendrix, had lied to the Senate Foreign Relations subcommittee on multinational corporations in 1973.

The subcommittee was investigating allegations that ITT interfered in the 1970 presidential elections in Chile and had offered nearly \$1 million to opponents of the now-late Marxist-oriented Salvador Allende.

In separate hearings before Robinson yesterday, attorneys for Gerrity and Berrellez argued that all charges against their clients should be dropped.

THE WASHINGTON POST
21 August 1978

ARTICLE APPEARED
ON PAGE A-19

Colby Denies Leaking Story On CIA Domestic Snooping

United Press International

Former director William E. Colby denied yesterday he leaked the explosive 1974 story about the Central Intelligence Agency's illegal involvement in domestic surveillance.

But Colby, who headed the CIA from 1973 to 1976, conceded he confirmed the story to New York Times reporter Seymour Hersh before publication 3½ years ago.

The story led to four government investigations of the CIA, opening some of the agency's secret activities to public scrutiny and leaving part of its staff demoralized.

The CIA's counterintelligence chief, James Angleton, retired within 48 hours after The Times story was published. Colby and Angleton were old bureaucratic enemies, and the feud has continued, with Angleton's extreme partisans trying to leave the impression Colby acted contrary to U.S. interests and might even be a Russian spy.

In a letter to the editor in Sunday's edition of The Washington Star, Colby responded to an article in Commentary magazine by writer-critic Edward Jay Epstein that was reprinted in The Star three weeks ago.

"While [Epstein] seems to have abandoned his earlier hypothesis that I might have been a Soviet 'mole'

[agent] within CIA . . . he makes other equally farfetched assertions which call for clear rebuttal," Colby said.

He said his comments to Hersh "had absolutely no connection with my professional differences of opinion with James Angleton over how counterintelligence should be conducted in CIA" and denied assertions he used the disclosure of the information to oust the counterintelligence chief and three top deputies.

Colby insisted his overhaul of the CIA's counterintelligence operation "strengthened rather than weakened that effort over the way it was conducted previously."

Epstein said "it was Colby himself who had engineered the leak" of the "family jewels"—the details of two decades of questionable CIA activities.

"I did not leak the so-called 'family jewels' to Seymour Hersh of The New York Times," Colby said in his letter.

He said Hersh came to him before publication of the story "with a much exaggerated account of those past events."

"It was clear to me that he was going to publish that story, so I tried to bring him down to a more accurate perspective, and I gave him no material he did not already have," Colby said.

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Letters to the editor

'I did not leak the family jewels'

While Edward Jay Epstein seems to have abandoned his earlier hypothesis that I might have been a Soviet "mole" within CIA (a "mole" is the word for an agent whose job is to burrow into and eventually undermine the other side's intelligence system — Ed.) in his *Commentary* article which *The Star* reprinted on Aug. 6, he makes other equally far-fetched assertions which call for clear rebuttal.

I did not leak the so-called "family jewels" to Seymour Hersh of *The New York Times*. Mr. Hersh came to me before his Dec. 22, 1974, *Times* article with a much exaggerated account of those past events. It was clear to me that he was going to publish that story, so I tried to bring him down to a more accurate perspective, and I gave him no material he did not already have.

Second, my comments to Hersh and my testimony about CIA during 1975 had absolutely no connection with my professional differences of opinion with James Angleton over how counterintelligence should be conducted in CIA. Mr. Epstein seems to have missed the account of my conversation with Mr. Angleton on Dec. 20, 1974, which appears on page 396 of my book, "Honorable Men," where I clearly said that both he and I knew that his movement from the post as CIA's chief of counterintelligence was not connected with Mr. Hersh's article.

Third, my change in the CIA counterintelligence structure strengthened rather than weakened that effort over the way it was con-



WILLIAM E. COLBY

ducted previously, from which I could find no tangible results.

Fourth, I certainly did favor the recruitment of additional agents in so-called "hard-target" areas, including the Soviet Union, following a program initiated in the mid 1960s in CIA. I do not have access to the details of the Lipavsky case at this

time, but I note from the public accounts of it that CIA apparently tried him out and abandoned him after a few weeks of its usual cautious testing. The Soviets apparently utilized these tentative contacts as the basis for a concocted attempt to smear the Jewish activist movement.

Perhaps Mr. Epstein's next (fifth) theory to explain my change in CIA's counterintelligence machinery and my 1975 testimony will look at the straightforward accounts of both contained in my book. The first was to make counterintelligence more efficient, helping and not hindering our positive intelligence mission. The second was an appreciation that a new day had dawned from the old days of total secrecy and unquestioned executive power over intelligence, and a belief that CIA in this new era must be accountable to the Congress and to the American people as well as to the president.

I stand by both of these beliefs.

William E. Colby
Washington, D.C.

(NOTE: For those who came in late, the Epstein piece alleged that Mr. Colby, as director of the CIA in 1975, came close to wrecking the agency by leaking to *The New York Times* reports of the agency's domestic skulduggery, referred to as the "family jewels.")

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ing system of fifteenth- and sixteenth-century England? "If I write an article," Marchetti has told Anthony Lewis of the *New York Times*, "I always have to worry about proving that it is not based on something I heard in the agency. It makes editors leery of having you write for them—they don't want to get involved in litigation. I'm even writing two novels now, and it's on my mind."

Marchetti may soon be joined by another licensed citizen. In November, 1977, Frank Snepp, another former CIA agent, published a book about grievous CIA malfeasance during the evacuation of Saigon, *Dacent Interval* (Random House), without CIA clearance. Three months later, he too was brought to court by the Justice Department for having violated his secrecy agreement with the CIA. This time, however, the government not only wants Snepp permanently dependent on the CIA for approval of whatever he writes based on his years with the agency. The government also intends to deter any future whistle blowers by insisting on taking all Snepp's profits from his book, all tie-in profits, and an unspecified amount of money damages for the harm he has done the CIA. And Snepp is to pay all court costs.

The American Civil Liberties Union is defending Snepp because, as Norman Dorsen and Aryeh Neier have pointed out, this suit by the Carter administration "is the most sweeping attempt to date by the Executive Branch to interfere with the right of former government officials to publish accounts of their government service. . . . If the government is successful in this case, the threat of financial ruin and injunction against speaking and writing would chill the participation of former officials in debate on public issues. This

case makes a mockery of the administration's claim to be interested in protecting whistle blowers."

What makes the Snepp case far more dangerous than even Marchetti's is the government's claim that Snepp not only broke a contract—the secrecy agreement—but also violated a "fiduciary" obligation to the CIA by publishing a book that was not authorized by the agency. That is, the contract aside, secrecy inheres in the very nature of the relationship between any government employee who has access to classified information and the agency where that information is to be found.

Accordingly, this "fiduciary" duty requires that the employee must obtain prepublication approval from the government. The employee cannot unilaterally decide that he has not disclosed any classified information. Says the Justice Department in the Snepp case: "Only the employer—in this case, the Central Intelligence Agency— . . . may determine what is classified and thus not disclosable. . . . Only those at the top of the intelligence community pyramid have the total view of the many pieces of the puzzle to know the implication of the release of any one item."

So too might it be said of any bureaucratic pyramid in any agency involved in classified material. Therefore, says Mark Lynch, Snepp's attorney, if the government wins, this "fiduciary" doctrine of prior restraint can be stretched to include those who have worked or still work for the Defense Department, the National Security Council, the White House, and all other agencies that amass classified material and are the sole judges of "the implication of the release of any one item." The result would be not so much a chilling effect as a permanent freeze because "no-publication" agreements could then be extended throughout government on "fiduciary" grounds.

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8 Aug 78

24 AUG 1978

Mr. Max Frankel
Editor, Editorial Page
The New York Times
229 West 43 Street
New York, New York 10036

Dear Mr. Frankel:

Thanks for your helpful and extensive reply to my letter to Abe Rosenthal. I appreciate the several ideas that you have put forward. They all have merit. Let me comment on but a few.

Quite frequently we do claim the privilege of retaining something in a secret classification although it has already appeared in the public domain. There is, however, a considerable difference between a government agency officially acknowledging the substance of a secret which has leaked and that same secret information appearing in a newspaper or a memoir. To begin with there is the fact of verification. Beyond that there is often a factor of reneging on an agreement for secrecy with an intelligence agent, a foreign intelligence service, or some other entity. In short, while it may seem obtuse at times for us not to release information which is in the public domain, there often is good cause.

While you have a good point that no one should be subjected to censorship for the rest of his life simply because he worked in an agency like the CIA for a short period of time, all we are really asking is that we have a right to review any publication based on information obtained during that period of employment. We certainly are not empowered to pass judgment on material derived from other experiences and even as to material derived from CIA experiences we assert only a limited right of review, the sole purpose of which is to screen out properly classified information.

I, too, think there is some promise in Bill Colby's thesis, and surely enough to warrant careful exploration. We are indeed both interested in the same result: the preservation of truly vital secrets, the downgrading of as many "run-of-the-mill secrets" as

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can be downgraded, and elimination of any proclivity to use secrecy as a way to obscure acts of embarrassment. I sincerely hope that the country can grapple with this issue in the months ahead and attempt to define a national attitude on secrecy in a democratic society. I am enclosing a draft article on this topic which I have written. Perhaps you would be good enough to let the Magazine Section look at it to see if they have any interest in it. I suspect it is not quite the type of thing for their publication, but I would be pleased if they would at least consider it.

Again, thanks.

Yours sincerely,
/s/ Stansfield Turner

STANSFIELD TURNER

Enc.

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